

FIRST REGULAR SESSION

HOUSE BILL NO. 565

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BEHNEN.

Read 1st time February 27, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1880L.011

AN ACT

To repeal sections 338.013, 338.055, 338.065, 338.220, and 338.353, RSMo, and to enact in lieu thereof ten new sections relating to the licensure and regulation of pharmacists, pharmacies, drug distributors and related pharmaceutical services and personnel, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 338.013, 338.055, 338.065, 338.220, and 338.353, RSMo, are
2 repealed and ten new sections enacted in lieu thereof, to be known as sections 338.013, 338.055,
3 338.065, 338.075, 338.145, 338.155, 338.220, 338.353, 338.380, and 338.390, to read as
4 follows:

338.013. 1. Any person desiring to assist a pharmacist in the practice of pharmacy as
2 defined in this chapter shall apply to the board of pharmacy for registration as a pharmacy
3 technician. [Such applicant shall not have engaged in conduct or behavior determined to be
4 grounds for discipline pursuant to this chapter.] Such applicant shall **be, at a minimum, legal**
5 **working age and** forward to the board the appropriate fee and written application on a form
6 provided by the board. Such registration shall be the sole authorization permitted to allow
7 persons to assist licensed pharmacists in the practice of pharmacy as defined in this chapter.

8 **2. The board may refuse to issue a certificate of registration as a pharmacy**
9 **technician to an applicant that has been adjudicated and found guilty, or has entered a**
10 **plea of guilty or nolo contendere to a violation of any state, territory, or federal drug law,**
11 **or to any felony or has violated any provision of subsection 2 of section 338.055. However,**
12 **the board may issue such person a certificate of registration, but may authorize the person**

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

13 to work as a pharmacy technician provided that person adheres to certain terms and
14 conditions imposed by the board. The board shall place on the employment
15 disqualification list the name of an applicant who the board has refused to issue a
16 certificate of registration as a pharmacy technician, or the name of a person who the board
17 has issued a certificate of registration as a pharmacy technician but has authorized to work
18 under certain terms and conditions. The board shall notify the applicant of the applicant's
19 right to file a complaint with the administrative hearing commission as provided by
20 chapter 621, RSMo.

21 [2.] 3. If an applicant has submitted the required fee and an application for registration
22 to the board of pharmacy, the applicant for registration as a pharmacy technician may assist a
23 licensed pharmacist in the practice of pharmacy as defined in this chapter for a period of up to
24 ninety days prior to the issuance of a certificate of registration. The applicant shall keep a copy
25 of the submitted application on the premises where the applicant is employed. **However, if the**
26 **board refuses to issue a certificate of registration as a pharmacy technician to an applicant,**
27 **the applicant shall immediately cease assisting a licensed pharmacist in the practice of**
28 **pharmacy.**

29 [3.] 4. A certificate of registration issued by the board shall be conspicuously displayed
30 in the pharmacy or place of business where the registrant is employed.

31 [4.] 5. Every pharmacy technician who desires to continue to be registered as provided
32 in this section shall, within thirty days before the registration expiration date, file an application
33 for the renewal, accompanied by the fee prescribed by the board. No registration as provided in
34 this section shall be valid if the registration has expired and has not been renewed as provided
35 in this subsection.

36 [5.] 6. The board shall maintain an employment disqualification list [of the names of all
37 pharmacy technicians who have been adjudicated and found guilty, or have entered a plea of
38 guilty or nolo contendere to violation of any state, territory or federal drug law, been found
39 guilty, pled guilty or nolo contendere to any felony or have violated any provision of subdivision
40 (2), (3), (4), (6), (7), (11), (12) or (15) of subsection 2 of section 338.055]. **No person whose**
41 **name appears on the employment disqualification list shall work as a pharmacy technician,**
42 **except as otherwise authorized by the board. The board may authorize a person whose**
43 **name appears on the employment disqualification list to work or continue to work as a**
44 **pharmacy technician provided that person adheres to certain terms and conditions**
45 **imposed by the board.**

46 7. The board may place on the employment disqualification list the name of a
47 pharmacy technician who has been adjudicated and found guilty, or has entered a plea of
48 guilty or nolo contendere to a violation of any state, territory, or federal drug law, or to any

49 **felony or has violated any provision of subsection 2 of section 338.055.**

50 [6.] **8.** After an investigation and a determination has been made to place a person's name
51 on the employment disqualification list, the board shall notify such person in writing mailed to
52 the person's last known address that:

53 (1) An allegation has been made against the person, the substance of the allegation and
54 that an investigation has been conducted which tends to substantiate the allegation;

55 (2) Such person's name [will be included in] **has been added to** the employment
56 disqualification list of the board;

57 (3) The consequences to the person of being listed and the length of time the person's
58 name will be on the list; and

59 (4) The person's [rights and the procedure to challenge the inclusion of the person's name
60 on the disqualification list] **right to file a complaint with the administrative hearing**
61 **commission as provided in chapter 621, RSMo.**

62 [7. If no reply has been received by the board within thirty days after the board mailed
63 the notice, the board may include the name of such person on such disqualification list.]

64 **9.** The length of time a person's name shall remain on the disqualification list shall be
65 determined by the board. [The board may, also, provide for alternative sanctions, including, but
66 not limited to, conditional employment based on a requirement that the person submit certain
67 documentation within a certain period of time. Any person who receives notice that the board
68 intends to place the person's name on the employment disqualification list may file an appeal
69 with the administrative hearing commission as provided in chapter 621, RSMo.]

70 8.] **10.** No hospital or licensed pharmacy shall knowingly employ any person whose
71 name appears on the employee disqualification list[.], **except that a hospital or licensed**
72 **pharmacy may employ a person whose name appears on the employment disqualification**
73 **list that the board has authorized to work under certain terms and conditions. Any**
74 **hospital or licensed pharmacy shall report to the board any final disciplinary action taken**
75 **against a pharmacy technician or the voluntary resignation of a pharmacy technician**
76 **against whom any complaints or reports have been made which might have led to final**
77 **disciplinary action that can be a cause of action for discipline by the board as provided in**
78 **subsection 2 of section 338.055.** Compliance with the foregoing sentence may be interposed
79 as an affirmative defense by the employer.

338.055. 1. The board may refuse to issue **or renew** any certificate of registration or
2 authority, permit or license required pursuant to this chapter for one or any combination of
3 causes stated in subsection 2 of this section. The board shall notify the applicant in writing of
4 the reasons for the refusal and shall advise the applicant of his right to file a complaint with the
5 administrative hearing commission as provided by chapter 621, RSMo.

6 2. The board may cause a complaint to be filed with the administrative hearing
7 commission as provided by chapter 621, RSMo, against any holder of any certificate of
8 registration or authority, permit or license required by this chapter or any person who has failed
9 to renew or has surrendered his certificate of registration or authority, permit or license for any
10 one or any combination of the following causes:

11 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic
12 beverage to an extent that such use impairs a person's ability to perform the work of any
13 profession licensed or regulated by this chapter;

14 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
15 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,
16 for any offense reasonably related to the qualifications, functions or duties of any profession
17 licensed or regulated under this chapter, for any offense an essential element of which is fraud,
18 dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not
19 sentence is imposed;

20 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of
21 registration or authority, permit or license issued pursuant to this chapter or in obtaining
22 permission to take any examination given or required pursuant to this chapter;

23 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by
24 fraud, deception or misrepresentation;

25 (5) [Incompetency] **Incompetence**, misconduct, gross negligence, fraud,
26 misrepresentation or dishonesty in the performance of the functions or duties of any profession
27 licensed or regulated by this chapter;

28 (6) Violation of, or assisting or enabling any person to violate, any provision of this
29 chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

30 (7) Impersonation of any person holding a certificate of registration or authority, permit
31 or license or allowing any person to use his or her certificate of registration or authority, permit,
32 license or diploma from any school;

33 (8) **Denial of licensure to an applicant or** disciplinary action against **an applicant or**
34 the holder of a license or other right to practice any profession regulated by this chapter granted
35 by another state, territory, federal agency, or country **whether or not voluntarily agreed to by**
36 **the licensee or applicant, including but not limited to, surrender of the license** upon grounds
37 for which [revocation or suspension] **denial or discipline** is authorized in this state;

38 (9) A person is finally adjudged incapacitated by a court of competent jurisdiction;

39 (10) Assisting or enabling any person to practice or offer to practice any profession
40 licensed or regulated by this chapter who is not registered and currently eligible to practice under
41 this chapter;

42 (11) Issuance of a certificate of registration or authority, permit or license based upon
43 a material mistake of fact;

44 (12) Failure to display a valid certificate or license if so required by this chapter or any
45 rule promulgated hereunder;

46 (13) Violation of any professional trust or confidence;

47 (14) Use of any advertisement or solicitation which is false, misleading or deceptive to
48 the general public or persons to whom the advertisement or solicitation is primarily directed;

49 (15) Violation of the drug laws or rules and regulations of this state, any other state or
50 the federal government;

51 (16) The intentional act of substituting or otherwise changing the content, formula or
52 brand of any drug prescribed by written or oral prescription without prior written or oral approval
53 from the prescriber for the respective change in each prescription; provided, however, that
54 nothing contained herein shall prohibit a pharmacist from substituting or changing the brand of
55 any drug as provided under section 338.056, and any such substituting or changing of the brand
56 of any drug as provided for in section 338.056 shall not be deemed unprofessional or
57 dishonorable conduct unless a violation of section 338.056 occurs;

58 (17) Personal use or consumption of any controlled substance unless it is prescribed,
59 dispensed or administered by a health care provider who is authorized by law to do so.

60 3. After the filing of such complaint, the proceedings shall be conducted in accordance
61 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing
62 commission that the grounds, provided in subsection 2, for disciplinary action are met, the board
63 may, singly or in combination, censure or place the person named in the complaint on probation
64 on such terms and conditions as the board deems appropriate for a period not to exceed five
65 years, or may suspend, for a period not to exceed three years, or revoke the license, certificate,
66 or permit. The board may impose additional discipline on a licensee, registrant or permittee
67 found to have violated any disciplinary terms previously imposed under this section or by
68 agreement. The additional discipline may include, singly or in combination, censure, placing the
69 licensee, registrant or permittee named in the complaint on additional probation on such terms
70 and conditions as the board deems appropriate, which additional probation shall not exceed five
71 years, or suspension for a period not to exceed three years, or revocation of the license, certificate
72 or permit.

73 4. If the board concludes that a [pharmacist] **licensee or registrant** has committed an
74 act or is engaging in a course of conduct which would be grounds for disciplinary action which
75 constitutes a [clear and present] **probability of serious** danger to the public health and safety,
76 the board may file a complaint before the administrative hearing commission requesting an
77 expedited hearing and specifying the activities which give rise to the danger and the nature of

78 the proposed restriction or suspension of the [pharmacist's] **licensee's or registrant's** license.
79 Within fifteen days after service of the complaint on the [pharmacist] **licensee or registrant**, the
80 administrative hearing commission shall conduct a preliminary hearing to determine whether the
81 alleged activities of the [pharmacist] **licensee or registrant** appear to constitute a [clear and
82 present] **probability of serious** danger to the public health and safety which justify that the
83 [pharmacist's] **licensee's or registrant's** license **or registration** be immediately restricted or
84 suspended. The burden of proving that [a pharmacist is a clear and present] **the actions of a**
85 **licensee or registrant constitute a probability of serious** danger to the public health and safety
86 shall be upon the state board of pharmacy. The administrative hearing commission shall issue
87 its decision immediately after the hearing and shall either grant to the board the authority to
88 suspend or restrict the license or dismiss the action.

89 5. If the administrative hearing commission grants temporary authority to the board to
90 restrict or suspend the [pharmacist's] **licensee's or registrant's** license, such temporary authority
91 of the board shall become final authority if there is no request by the [pharmacist] **licensee or**
92 **registrant** for a full hearing within thirty days of the preliminary hearing. The administrative
93 hearing commission shall, if requested by the [pharmacist] **licensee or registrant** named in the
94 complaint, set a date to hold a full hearing under the provisions of chapter 621, RSMo, regarding
95 the activities alleged in the initial complaint filed by the board.

96 6. If the administrative hearing commission dismisses the action filed by the board
97 pursuant to subsection 4 of this section, such dismissal shall not bar the board from initiating a
98 subsequent action on the same grounds.

99 7. **If the board concludes that a licensee or registrant has committed an act or is**
100 **engaging in a course of conduct which would be grounds for disciplinary action and which**
101 **constitutes a probability of serious danger to the public health and safety, the board may**
102 **restrict or suspend the license, registration, or permit of the licensee, registrant, or**
103 **permittee pending action of the administrative hearing commission. Within ten business**
104 **days of such restriction or suspension, the board shall file a complaint before the**
105 **administrative hearing commission requesting an expedited hearing and decision pursuant**
106 **to subsection 4 of this section.**

338.065. 1. [After August 28, 1990,] At such time as the final trial proceedings are
2 concluded whereby a licensee [or], **permittee, registrant, or any person who has failed to**
3 **renew or has surrendered his or her certificate of registration or authority, permit, or**
4 **license** has been adjudicated and found guilty, or has entered a plea of guilty or nolo contendere,
5 in a felony prosecution pursuant to the laws of the state of Missouri, the laws of any other state,
6 territory or the laws of the United States of America for any offense reasonably related to the
7 qualifications, functions or duties of a licensee, **permittee,** or registrant pursuant to this chapter

8 or any felony offense, an essential element of which is fraud, dishonesty or an act of violence,
9 or for any felony offense involving moral turpitude, whether or not sentence is imposed, the
10 board of pharmacy may hold a disciplinary hearing to singly or in combination censure or place
11 the licensee or registrant named in the complaint on probation on such terms and conditions as
12 the board deems appropriate for a period not to exceed five years, or may suspend, for a period
13 not to exceed three years, or revoke the license, certificate, registration or permit.

14 2. Anyone who has been revoked or denied a license, permit or certificate to practice in
15 another state may automatically be denied a license or permit to practice in this state. However,
16 the board of pharmacy may establish other qualifications by which a person may ultimately be
17 qualified and licensed to practice in Missouri.

18 3. **The board may conduct a disciplinary hearing to determine discipline on any**
19 **applicant for a license, permit, or registration or on any licensee, permittee, or registrant**
20 **who has been disciplined by another state, territory, or federal agency for grounds that are**
21 **the basis for disciplinary action in this state, and may impose discipline on the license,**
22 **permit, or registration in the same manner as provided for in subsection 1 of this section.**
23 **The board may conduct a disciplinary hearing pursuant to this subsection only after the**
24 **board has determined that the licensee, permittee, or registrant was afforded sufficient due**
25 **process rights by the original state, territory, or federal agency prior to the imposition of**
26 **discipline or denial of licensure. The board shall set forth, by rule, the basis for**
27 **determining whether an applicant or licensee, permittee, or registrant was afforded**
28 **sufficient due process rights by the state territory or federal agency originally imposing**
29 **discipline.**

338.075. 1. **When any person offers to engage in or engages in any act or practice**
2 **for which a certificate of registration or authority, permit, or license is required and upon**
3 **a showing that such act or practice was performed or offered to be performed without a**
4 **license, the board may impose civil penalties in an amount not to exceed one thousand**
5 **dollars for each violation and for each day that the violation occurs.**

6 2. **Any person who receives notice concerning the imposition of a civil penalty by**
7 **the board may file an appeal with the administrative hearing commission as provided for**
8 **in chapter 621, RSMo. Any action brought pursuant to this section shall be in addition and**
9 **not in lieu of any penalty provided by law and may be brought concurrently with other**
10 **actions to enforce the provisions of this chapter.**

11 3. **The board may enforce its imposition of a civil penalty by applying to the circuit**
12 **court of Cole County, the county of the investigation, hearing, or proceeding, or any county**
13 **where the person resides or may be found, for an order upon any person who shall fail to**
14 **pay any civil penalty imposed. A show cause order and a copy of the application therefore**

15 shall be served upon the person in the same manner as a summons in a civil action. If the
16 circuit court shall, after a hearing, determine that the civil penalty should be sustained and
17 enforced, such court shall proceed to enforce the civil penalty. Any person who fails to
18 comply with a circuit court order that sustains the action of the board shall be considered
19 in contempt and subject to penalties as provided by law.

338.145. 1. The president of the board may administer oaths, issue subpoenas
2 duces tecum, and require production of documents and records not otherwise available to
3 the board pursuant to the inspection authority granted to the board pursuant to sections
4 338.100 to 338.150. Subpoenas duces tecum shall be served by a person authorized to serve
5 subpoenas of courts of record. In lieu of requiring attendance of a person to produce
6 original documents in response to a subpoena duces tecum, the board may require sworn
7 copies of such documents to be filed or delivered to a designated representative.

8 2. The board may enforce its subpoenas duces tecum by applying to the circuit
9 court of Cole County, the county of the investigation, hearing, or proceeding, or any county
10 where the records reside or may be found, for any order upon any person who shall fail
11 to obey a subpoena duces tecum to show cause why such subpoena duces tecum should not
12 be enforced, which such order and a copy of the application therefore shall be served upon
13 the person in the same manner as a summons in a civil action. If the circuit court shall,
14 after a hearing, determine that the subpoena duces tecum should be sustained and
15 enforced, such court shall proceed to enforce the subpoena duces tecum in the same
16 manner as though the subpoena had been issued in a civil case in the circuit court.

17 3. Failure of a licensee to comply with the requirements of a validly enforced
18 subpoena duces tecum shall constitute grounds for disciplinary action as defined in section
19 338.055.

338.155. 1. Any person who in good faith and without malice reports, provides
2 information, or cooperates in any manner with the board, or assists the board in any
3 manner, including, but not limited to, any applicant or licensee, whether or not the
4 applicant or licensee is the subject of an investigation, record custodians, consultants,
5 attorneys, board members, agents, employees, staff, or expert witnesses, in the course of
6 any investigation, hearing, or other proceeding conducted by or before the board pursuant
7 to the provisions of this chapter shall not be subject to an action for civil damages as a
8 result of providing such information and cooperating with the board.

9 2. No physician or other authorized prescriber who, in good faith, cooperates with
10 the board by writing a prescription or drug order at the request of the board pursuant to
11 a routine inspection or a lawful investigation, shall, by virtue of that cooperation, be in
12 violation of this chapter or any drug laws of this state and shall be acting as an agent of the

13 state, and as such, shall have sovereign immunity for those actions.

14 **3. No licensee, registrant, permit holder, or other individual or entity subject to the**
15 **board's jurisdiction who, in good faith, fills a prescription presented by the board as part**
16 **of an inspection or investigation, shall, by virtue of that act, be in violation of this chapter**
17 **or the drug laws of this state, provided the prescription is otherwise prepared and**
18 **dispensed in a lawful manner.**

338.220. 1. It shall be unlawful for any person, copartnership, association, corporation
2 or any other business entity to open, establish, operate or maintain any pharmacy, as defined by
3 statute without first obtaining a permit or license to do so from the Missouri board of pharmacy.
4 The following classes of pharmacy permits or licenses are hereby established:

- 5 (1) Class A: Community/ambulatory;
- 6 (2) Class B: Hospital outpatient pharmacy;
- 7 (3) Class C: Long-term care;
- 8 (4) Class D: [Home health care] **Nonsterile compounding**;
- 9 (5) Class E: Radio pharmaceutical;
- 10 (6) Class F: Renal dialysis;
- 11 (7) Class G: Medical gas;
- 12 (8) Class H: Sterile product compounding;
- 13 (9) Class I: Consultant services;
- 14 (10) Class J: Shared service;
- 15 **(11) Class K: Internet.**

16 2. Application for such permit or license shall be made upon a form furnished to the
17 applicant; shall contain a statement that it is made under oath or affirmation and that its
18 representations are true and correct to the best knowledge and belief of the person signing same,
19 subject to the penalties of making a false affidavit or declaration; and shall be accompanied by
20 a permit or license fee. The permit or license issued shall be renewable upon payment of a
21 renewal fee. Separate applications shall be made and separate permits or licenses required for
22 each pharmacy opened, established, operated or maintained by the same owner.

23 3. All permits, licenses or renewal fees collected pursuant to the provisions of sections
24 338.210 to 338.370 shall be deposited in the state treasury to the credit of the Missouri board of
25 pharmacy fund, to be used by the Missouri board of pharmacy in the enforcement of the
26 provisions of sections 338.210 to 338.370, when appropriated for that purpose by the general
27 assembly.

338.353. 1. The board of pharmacy is hereby authorized and empowered, when
2 complaints, examinations or inspection of a wholesale drug distributor or pharmacy distributor
3 disclose to the board that a wholesale drug distributorship or pharmacy distributorship is not

4 being operated or conducted according to such legal rules and regulations and the laws of
5 Missouri or any other state or the federal government with respect thereto, to cause a complaint
6 to be filed before the administrative hearing commission pursuant to chapter 621, RSMo,
7 charging the holder of a license to operate a drug distributorship or pharmacy wholesale
8 operation constituting grounds for discipline in accordance with section 338.055.

9 2. If the board concludes that a wholesale drug distributor or pharmacy distributor has
10 committed an act or is engaging in a course of conduct which constitutes a [clear and present]
11 **probability of serious** danger to the public health and safety in Missouri, the board may file a
12 complaint before the administrative hearing commission requesting an expedited hearing [and
13 specifying the activities which give rise to the danger and the nature of the proposed restriction
14 or suspension of the wholesale drug distributor's or pharmacy distributor's license. Within fifteen
15 days after service of the complaint on a wholesale drug distributor or pharmacy distributor, the
16 administrative hearing commission shall conduct a preliminary hearing to determine whether the
17 alleged activities of the wholesale drug distributor or pharmacy distributor appear to constitute
18 a clear and present danger to the public health and safety which justify that the wholesale drug
19 distributor's or pharmacy distributor's license be immediately restricted or suspended. The
20 burden of proving that a wholesale drug distributor or pharmacy distributor is a clear and present
21 danger to the public health and safety shall be upon the state board of pharmacy. The
22 administrative hearing commission shall issue its decision immediately after the hearing and
23 shall either grant to the board the authority to suspend or restrict the license or dismiss the action.

24 3. If the administrative hearing commission grants temporary authority to the board to
25 restrict or suspend the wholesale drug distributor's or pharmacy distributor's license, such
26 temporary authority of the board shall become final authority if there is no request by the
27 wholesale drug distributor or pharmacy distributor for a full hearing within thirty days of the
28 preliminary hearing. The administrative hearing commission shall, if requested by the wholesale
29 drug distributor or pharmacy distributor named in the complaint, set a date to hold a full hearing
30 under the provisions of chapter 621, RSMo, regarding the activities alleged in the initial
31 complaint filed by the board.

32 4. If the administrative hearing commission dismisses the action filed by the board
33 pursuant to subsection 2 of this section, such dismissal shall not bar the board from initiating a
34 subsequent action on the same grounds] **as provided for in subsection 4 of section 338.055,**
35 **or the board may restrict or suspend the license as provided for in subsection 7 of section**
36 **338.055.**

**338.380. 1. Whenever a duly authorized representative of the board of pharmacy
2 finds, or has probable cause to believe, that any drug or device is adulterated or
3 misbranded within the meaning of the federal Food and Drug Act or received through**

4 means of theft or deceit or drugs which may be in the possession of a suspended, revoked,
5 or nonrenewed licensee, after consultation with the board president or executive director,
6 he or she may affix to such drug or device a tag or other appropriate marking giving notice
7 that such article is or is suspected of being adulterated, misbranded, or received through
8 means of theft or deceit, has been detained or embargoed, and warning all persons not to
9 remove or dispose of such article by sale or otherwise until approval for removal or
10 disposal is given by the board, its agent, or the court. No person shall remove or dispose
11 of such embargoed drug or device by sale or otherwise without the permission of the board
12 or its agent or, after summary proceedings have been instituted, without permission from
13 the court.

14 2. When a drug or device detained or embargoed pursuant to subsection 1 of this
15 section has been declared by the board's duly authorized representative to be adulterated,
16 misbranded, or received by theft or deceit, the board shall, within thirty days of the placing
17 of the embargo, petition the circuit court in which jurisdiction the article is detained or
18 embargoed for an order for condemnation of such article. If the court determines that the
19 drug or device so detained or embargoed is not adulterated, misbranded, or received by
20 theft or deceit, the board shall direct the immediate removal of the tag or other marking.
21 If the board or the court lifts the embargo, the board shall not be held liable for damages
22 because of such embargo if the court finds that there was probable cause for the embargo.

23 3. If the court finds the detained or embargoed drug or device is adulterated,
24 misbranded, or received by theft or deceit, such drug or device, after entry of the decree,
25 shall be destroyed at the expense of the owner of the detained or embargoed drug or device
26 under the supervision of a board representative and all court costs and fees, storage, and
27 other proper expenses shall be borne by the owner of such drug or device. When the
28 adulteration or misbranding can be corrected by proper labeling or processing of the drug
29 or device, the court, after entry of the decree and after such costs, fees, and expenses have
30 been paid and a good and sufficient bond has been posted, may direct that such drug or
31 device be delivered to the owner thereof for such labeling or processing under the
32 supervision of a board representative. The owner shall pay the expense of such
33 supervision. Any bond required by this section shall be returned to the owner of the drug
34 or device on representation to the court by the board that the drug or device is no longer
35 in violation of the embargo and any expenses for supervision have been paid.

338.390. 1. In any disciplinary case that results in a complaint filed by the board
2 of pharmacy with the administrative hearing commission as provided by chapter 621,
3 RSMo, and which results in discipline being imposed on a license, permit, or holder of any
4 certificate of registration or authority the board may direct an order for payment of a sum

5 **not to exceed the actual and reasonable costs of the investigation and prosecution of the**
6 **case.**

7 **2. In the case of a pharmacy or drug distributor, the order may be made as to the**
8 **corporate owner, if any, and as to any pharmacist, officer, owner, or partner of the**
9 **pharmacy or drug distributor who is found to have had knowledge of or have knowingly**
10 **participated in one or more of the violations set forth in this section.**

11 **3. Where an order for recovery of costs is made and timely payment is not made**
12 **as directed in the board's decision, the board may enforce the order for payment in the**
13 **circuit court of Cole County. This right of enforcement shall be in addition to any other**
14 **rights the board may have as to any licensee directed to pay costs.**

15 **4. In any action for recovery of costs, proof of the board's decision shall be**
16 **conclusive proof of the validity of the order of payment and the terms of payment.**

17 **5. Failure to provide timely payment shall constitute grounds for additional**
18 **discipline as provided in section 338.055.**